

SEP 5 1975

ACTION

MEMORANDUM FOR: THE PRESIDENT

FROM:

MR. BUCHER *P.W.B.*
MR. LYNN *James L.*
DR. KISSINGERSUBJECT: Implementation of Recommendations on
Intelligence

We have reviewed the Rockefeller Commission recommendations concerning CIA activities in the United States and the effectiveness of executive branch oversight of intelligence activities and operations. This review also addressed some of the longer range problems inherent in the present organization and structure of the Intelligence Community, including those identified in the Schlesinger Report of 1971 and in the Murphy Commission Report of June 1975.

After this review, we have concluded, and this memorandum proposes, that the major recommendations of the Rockefeller Commission for control and oversight of the CIA should be extended to all the agencies of the Intelligence Community. This memorandum also recommends other near-term actions, not addressed by the Rockefeller Commission, which you can take now to prevent future abuses and to strengthen Presidential oversight of the intelligence agencies. Next steps to address long-range changes in intelligence community structure are also identified.

BackgroundThe Role of Intelligence

The purpose of foreign intelligence is to provide you and other policymakers with the information, assessments, and analytical judgments necessary to illuminate the range of policy alternatives and to enable the policymakers in Government to exercise sound decision-making.

NSC Declassification/Release Instructions on File

Three important areas in assessing our intelligence programs are:

1. Public Confidence. While many intelligence activities must be conducted in secrecy, the Intelligence Community must operate in such a manner as to command the confidence of Congress and the public. The intelligence agencies and CIA, in particular, have engaged in some questionable and, in some cases, illegal activities that resulted in improper invasion upon the rights of American citizens. As a result, the confidence of the Congress and the public in the Intelligence Community has been damaged.
2. Product Quality and Timeliness. The Intelligence Community must produce a quality product and respond in a timely fashion to the needs of the consumers and the concerns of the policymakers. Continuing emphasis is required on intelligence consumer needs and improved product quality.
3. Economy and Efficiency. Intelligence is a modern world necessity requiring large resources. The Community requires the authoritative leadership and oversight necessary to resolve problems of overlap and duplication in collection, make efficient choices between new and competing systems, and adjust the balance between collection and production.

We have not attempted an in-depth review of the broad issues facing the Intelligence Community. We have focused our effort on the recent study conducted by the Rockefeller Commission and have drawn on the Murphy Commission Report and on earlier analyses such as the OMB-NSC study of 1971 (the Schlesinger Report).

Near-term Actions to Prevent Future Abuses

The major concern of immediate importance is to take the initiative in imposing stricter controls over the intelligence agencies and to demonstrate to the Congress and the public that your actions will be effective. The Rockefeller Commission Report focused on this problem of control and the prevention of future abuses. It appropriately emphasized

(1) improvements in Presidential oversight through strengthening the elements of the Executive Office of the President charged with support to you, as President, and (2) revised guidelines, either in legislation or by Executive Order, that clarify and limit the role and functions of the intelligence agencies.

We believe there is a need to act now to prevent future abuses without prejudice to later decisions affecting product quality and efficiency in the use of resources. Specific actions on Rockefeller Commission proposals, short of legislation, are proposed for your consideration. Legislative changes are precluded because of the probable delays inherent in this approach.

1. Presidential Oversight

The Rockefeller Commission specifically recommended expanding the role of PFIAB to include oversight of statutory compliance and an enlarged staff with a full-time chairman. The Murphy Commission endorsed this approach, and recommended expanded roles for the review of covert actions by the 40 Committee and of intelligence consumers' needs by the NSC Intelligence Committee. Along with the OMB, which reviews the programs and budgets of the intelligence agencies, PFIAB and the NSC are the major elements of your office currently engaged in the oversight of the intelligence agencies on your behalf.

We have developed a proposal to expand the oversight role for the PFIAB as recommended by the Rockefeller Commission. In addition, we would propose to strengthen the supervisory role of the NSC and to enhance the OMB review function. The PFIAB would be directed to extend its oversight of intelligence activities to review allegations of unlawful conduct or other improprieties. The NSC Intelligence Committee would be expanded to include the Deputy Attorney General and would conduct continuing review and supervision of the Intelligence Community on behalf of the NSC. Finally, the Office of Management and Budget would institute tighter controls over intelligence resources during financial execution of the budget and would prepare a classified budget appendix that could be transmitted to the Congress along with your regular 1977 budget submission.

Your approval of these proposals would build on the strengths of existing institutions in the executive office, could be accomplished quickly and would enhance public perception of Presidential control over intelligence activities.

Recommendation

Your advisors agree that you should:

- Direct the PFIAB to expand its oversight of intelligence activities to include a review of allegations of unlawful conduct or other improprieties. The Executive Order to this effect is incorporated in Tab A. Provisions for an enlarged staff, but not a full-time chairman, are included.
- Direct the NSC to strengthen its process for providing intelligence community guidance and supervision through an expanded NSC Intelligence Committee to include the Deputy Attorney General. Attached at Tab B is a directive to this effect.
- Direct the OMB to take those steps necessary to institute tighter fiscal controls of intelligence resources during budget execution and to prepare a classified budget appendix available to be transmitted to the Congress along with your regular 1977 budget submission.

We recommend that you sign the Executive Order at Tab A and the directive at Tab B.

2. Protecting Intelligence Sources and Methods

The Rockefeller Commission recommended changing the responsibility of the DCI with respect to protection of intelligence sources and methods in order to preclude improper investigatory or law enforcement functions. In a related action, the Commission recommended establishing a single point of contact for transmission of all White House staff requests to the CIA.

The agencies involved and your staffs agree with these recommendations and with extending their application throughout the entire intelligence community.

Recommendation

Your advisors agree that you should:

Issue an Executive Order limiting the DCI's responsibility for protection of intelligence sources and methods to preclude an improper investigatory or law enforcement function. Attached at Tab C is the Executive Order.

Issue a memorandum establishing a single point of contact in the NSC to clear requests for other than routine intelligence materials from within the EOP. Attached at Tab D is the memorandum.

We recommend that you sign the Executive Order at Tab C and the memorandum at Tab D.

3. Restrictions on Domestic Activities

The Rockefeller Commission proposed an Executive Order limiting CIA's collection of information about the domestic activities of U.S. citizens and the clandestine collection of foreign intelligence from Americans. There are three options with respect to Presidential guidelines restricting the conduct of domestic operations by intelligence agencies:

- (1) Issue an Executive Order establishing restrictions on the domestic activities of the CIA only, applying the standards enunciated by the Rockefeller Commission.
- (2) Issue an Executive Order applying the standards enunciated by the Rockefeller Commission to the domestic activities of the entire intelligence community.
- (3) Issue an Executive Order applying these standards to the entire intelligence community except the FBI.

The advantages of an Executive Order limited to the CIA are:

The issues involved, as well as the particular restrictions, have been extensively studied by the Rockefeller Commission and are agreed to by

the Director of Central Intelligence. Your advisors who favor this option believe that the issue raised in the case of other intelligence agencies (NSA, DIA, and the FBI) are substantially different and require additional study.

- ° Additional Executive Orders can be issued later as to the domestic activities of other intelligence agencies after better identifying the kinds of restrictions needed.

The advantages of an Executive Order applicable to the entire intelligence community are:

- ° In concluding that the CIA should not collect and analyze information on the domestic activities of U.S. citizens, the Commission recommended restrictions which most Americans would agree should be applicable to any of the secret foreign intelligence or counterintelligence agencies of the Government; there is no reason, in principle, for precluding the CIA from collecting and analyzing such information while permitting the NSA to do so.
- ° An Order limited to the CIA would leave your Administration open to the charge that only a small sector of a large problem has been dealt with. This is particularly true if Congress and the media continue to uncover instances of abuses similar to those involving the CIA in other intelligence agencies.
- ° Subsequent Executive Orders applicable to the other agencies will invite comparisons to the CIA Order; any "discrepancies" will be characterized as "glaring loopholes."
- ° Those of your advisors who favor this option believe it possible to frame a set of restrictions which will satisfy the American people and would not unduly restrict the other agencies engaged in foreign intelligence and counterintelligence; a comprehensive

Executive Order will probably be delayed for one or two weeks, particularly to resolve FBI objections.

The advantages of Option #3, an Executive Order applicable to all intelligence agencies except the FBI, are as follows:

- ° The FBI, which has law enforcement as well as counterintelligence functions, has been the major stumbling block in preparing an Executive Order which covers the entire intelligence community. The major problem is to develop regulations which effectively limit the FBI's counterintelligence role while not impairing its law enforcement activities. This will take several weeks to resolve.
- ° The Department of Justice has been studying the activities of the FBI for the past year, and is in the process of preparing guidelines which, when completed, might be embodied in a separate Executive Order for the FBI.
- ° An Executive Order will be issued in about one week.

If you select Option #1, we recommend that you sign the Executive Order attached at Tab E. If you select Option #2, we will prepare an appropriate Executive Order for your signature by the end of September. If you select Option #3, we will have an Executive Order for your signature by September 16.

DECISION

_____ Option #1, recommended by Justice, the DCI, and Counsel to the President.

_____ Option #2.

_____ Option #3, recommended by the Vice President, the National Security Council, and the Director of OMB.

The Rockefeller and Murphy Commissions both recommend legislation providing criminal penalties for persons who disclose classified information. These recommendations stem from a number of incidents in recent years - the Pentagon Papers, the Marchetti and Agne books on CIA, and newspaper columns on SALT negotiations and the Indo-Pakistan crisis. Both Commissions avoided endorsing a specific proposal because of the difficult civil liberties problems inherent in any such law. A revision to the criminal code (Title 18) has already been proposed by the Administration in the form of S.1, which includes a new section providing criminal penalties for disclosure of classified information. These provisions have been under strong attack. The American Bar Association voted against passage, and several influential Congressmen have indicated strong reservations.

Recommendation

In light of difficult problems posed by this proposed legislation, we recommend that you not endorse this recommendation at this time, but reaffirm your previous position that appropriate safeguards for classified information need to be established with due consideration for the rights of individual citizens by directing that the task group proposed in the final recommendation in this memorandum develop options for solving this critical problem.

5. Dual CIA Deputies

The Rockefeller Commission recommended the establishment of a second Deputy Director of Central Intelligence, to be confirmed by the Senate, who would directly manage the CIA, thereby freeing the Director for overall intelligence community matters. The present military deputy would be assigned the task of liaison with military intelligence. The second deputy would ease the present workload on the DCI and provide for a full-time manager of CIA's day-to-day activities. In order to carry out this recommendation, legislation revising the 1947 National Security Act would be required, and the designated Presidential appointee would require Senate confirmation.

Recommendation

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A decision on this specific organizational proposal can be more properly made in the context of a full reexamination of the intelligence community management structure. We agree that you should direct the task group proposed in the final recommendation in this memorandum to address this proposal.

Longer-range Opportunities to
Improve Intelligence

The near-term actions recommended above will go far to improve your oversight of the intelligence community and to provide safeguards against future abuses. They will, however, with the exception of the changes proposed for the NSCIC, have little impact on achieving the other major needs to improve the quality of the intelligence product and to improve efficiency. These are also extremely important if full public trust and confidence are to be regained.

The primary problem in this regard continues to be the fragmented intelligence organizational structure. Options available for improving intelligence community management and institutional arrangements were identified in the 1971 Schlesinger Report with some variations recommended by the Murphy Commission. They are:

- ° Strengthen the role of the DCI by providing him with greater authority over the operations and resources of the intelligence agencies, by either:
 - making him an all powerful intelligence czar who has direct authority over the principal intelligence agencies and their budgets; or
 - enhancing his stature and prerogatives. This could include cabinet level rank for the DCI, full membership in the NSC, direct and regular contact with the president, and directive authority over intelligence activities.

- ° Increase the staff support to the Secretary of Defense and improve DOD management of all Defense intelligence resources.
- ° Establish a White House Coordinator for Intelligence to act as a single control point for intelligence policies, resources and guidance.
- ° Strengthen congressional oversight of intelligence through revisions to current committee responsibilities and additional reporting requirements.

It seems likely that almost all of these solutions will be proposed and debated in the months ahead. We believe it is essential that, as the congressional investigations proceed, the Executive Branch be prepared to advance its own proposals and to respond fully to the changes and propositions that are advanced.

Recommendation

Your advisors are agreed that there is a need to establish on a priority basis a group tasked with reviewing the major options available for improving intelligence community management and institutional arrangements. The question of a second Deputy Director of Central Intelligence should specifically be addressed. This group should develop options for legislation to protect vital intelligence information by providing criminal penalties for the unauthorized disclosure of classified information. Possible congressional initiatives should be examined. This group would be composed of full-time nominees of the Assistant for National Security Affairs, the Director of OMB, Counsel to the President, the Director of Central Intelligence, the Secretary of Defense, the Secretary of State and the Attorney General, and would complete its report by December 31, 1975.

If you approve, we will prepare for your signature a directive establishing this group.

Approve _____

Disapprove _____

Enclosures